

69203-8

69203-8

NO. 69203-8

**COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON**

BRENT STROBECK,

Appellant,

v.

DAVID BROCK,

Respondent.

APPELLANT'S BRIEF

Robert F. Kehoe
Attorney at Law
WSBA# 21873
1900 W. Nickerson St., Suite 320
Seattle, WA 98119
(206) 283-7733
rfk@psvoa.com

11/11/11 10:11 AM
RECEIVED
COURT OF APPEALS
DIVISION ONE
SEATTLE, WA

TABLE OF CONTENTS

i		
A.	ASSIGNMENTS OF ERROR	1
B.	STATEMENT OF CASE	1
1.	Procedural History.	1
2.	Statement of Facts.....	2
C.	SUMMARY OF ARGUMENT	4
D.	ARGUMENT	5
1.	Standard of Review	5
2.	Mr. Strobeck’s Objection to the Surveillance Video Was Raised in a Timely Fashion.....	6
3.	The Broad Discovery Rules Are Intended to Promote Full Disclosure Prior to Trial.	7
4.	The Trial Court’s Failure To Sanction Mr. Brock Was Premised on an Erroneous Interpretation of the Discovery Rules.	9
5.	A Party’s Failure to Amend a Prior Discovery Response Which Is No Longer True Amounts to a Knowing Concealment. CR 26(e)(2)(B).....	10
6.	The Appropriate Sanction for Mr. Brock’s Knowing Concealment Was Exclusion of the Video. CR 37.....	11
a.	Mr. Brock Willfully Concealed the Existence of the Surveillance Video In Violation of the Discovery Rules...13	
b.	Mr. Strobeck Suffered Substantial Prejudice.....14	
c.	Any Lesser Sanction Than Exclusion of the Video Would Not Have Sufficed.....15	

7. The Trial Court’s Abuse of Discretion Is Reversible Error..... 16

E. CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Chiasson v. Zapata Gulf Marine Corp., 988 F.2d 513 (5th Cir. 1993) ... 15,
16

Gammon v. Clark Equip. Co., 38 Wn.App. 274, 686 P.2d 1102 (1984)
..... 8, 13, 16, 17

Hickman v. Taylor, 329 U.S. 495, 67 S.Ct. 385, 388, 91 L.Ed. 451 (1947)
..... 7, 8

Holbrook v. Weyerhaeuser Co., 118 Wn.2d 306, 822 P.2d 271 (1992). 5

In re Firestorm 1991, 129 Wn.2d 130, 916 P.2d 411 (1996) 5

Wegner v. Viessman, Inc., 153 F.R.D. 154 (N.D. Iowa 1994)..... 14

Magana v. Hyundai Motor America, 167 Wn.2d 570, 220 P.3d 191
(2009)..... 5, 13, 16

Mayer v. Sto Industries, Inc., 156 Wn.2d 677, 132 P.3d 115 (2006). 5

Papadrakis v. CSX Transp., Inc., 233 F.R.D. 227 (D. Mass. 2006) 14

Seaboldt v. Pennsylvania R.R. Co. v. 290 F.2d 296 (3d. Cir. 1961)..... 17

Seals v. Seals, 22 Wn.App. 652, 590 P.2d 1301 (1979) 10

Smith v. Behr Process Corp., 113 Wn.App. 306, 54 P.3d 665 (2002) 13

Taylor v. Cessna Aircraft Co., Inc., 39 Wn.App. 828, 696 P.2d 28 (1985)
..... 8

Thompson v. King Feed & Nutrition Service, Inc., 153 Wn.2d 447, 105
P.3d 378 (2005) 10, 11

United States v. Proctor & Gamble Co., 356 U.S. 677, 78 S.Ct. 983, 986,
2 L.Ed.2d 1077 (1958)..... 8

Washington State Physicians Insurance Exchange & Ass'n. v. Fisons, 122
Wn.2d 299, 858 P.2d 1054 (1993)..... passim

Rules

CR 26 passim

CR 37 9, 11

A. ASSIGNMENTS OF ERROR

Assignment of Error

The trial court erred in admitting surveillance video of Plaintiff Brent Strobeck (“Mr. Strobeck”) into evidence despite the timely objections raised at trial based on the defense’s failure to disclose the existence of surveillance video in response to written discovery.

Issues Pertaining to Assignment of Error

1. Did the trial court abuse its discretion in admitting the surveillance video into evidence on the ground that the video was rebuttal evidence, and, therefore, protected from discovery?

2. Was exclusion of the surveillance video from evidence the appropriate sanction for the defense’s knowing concealment of the same?

3. Was the admission of the surveillance video into evidence reversible error?

B. STATEMENT OF CASE

1. Procedural History.

Mr. Strobeck filed a Complaint for personal injuries in King County Superior Court arising out of a July 7, 2009, car vs. pedestrian accident. CP 1-4. Mr. Strobeck sustained a crush injury to his left foot and ankle when the right rear wheel of a car driven by defendant David

Brock (“Mr. Brock”) ran over Mr. Strobeck as he was standing outside the car collecting his belongings from the back seat.

The case was tried to a jury in April 2012, with the Honorable Regina Cahan presiding. The jury returned a defense verdict finding Mr. Brock was not negligent. CP 30-32.

The trial court entered a “Judgment on Verdict for Defendant and Order of Dismissal” on July 27, 2012. CP 30-34. Mr. Strobeck timely filed a Notice of Appeal on August 14, 2012.

2. Statement of Facts.

As part of Mr. Strobeck’s discovery, he served Mr. Brock with Interrogatories and Requests for Production on November 16, 2011. CP 19. The interrogatories were taken directly from the King County Superior Court Pattern Interrogatories for Automobile Tort Cases.¹ Mr. Brock served his responses to the written discovery on February 22, 2012 (more than three months after the responses were due). CP 19.

Interrogatory No. 21 states as follows:

List any and all photographs, motion pictures, videos, slides, drawings, diagrams, maps, or other graphic or electronic representations depicting the **INCIDENT** scene, the vehicles, any property damage, or any injuries. For each such item state the

¹ See King County LCR 33

name, address and telephone number of the custodian of the item, the date it was created, and who created the item.

CP 27. Mr. Brock's response to Interrogatory No. 21 states: "None known." CP 29.

On March 21, 2012, Mr. Brock supplemented his discovery responses by providing the report of defense expert witness Dr. Larry Murphy. CP 20. Mr. Brock did not provide any additional supplemental responses to Mr. Strobeck's written discovery requests. *Id.*

At trial, during the defense's cross-examination of Mr. Strobeck, defense counsel requested a sidebar conference with the trial court judge during which time the defense first disclosed the existence of a surveillance video of Mr. Strobeck obtained in March 2012. RP419 57. The video shows Mr. Strobeck walking outside of his apartment with his wife while carrying his toddler son. Ex. 21. Following the sidebar conference, the trial judge dismissed the jury for the weekend. RP419 57-88.

Before trial resumed on the following Monday, Mr. Strobeck filed a motion to exclude the surveillance video from evidence pursuant to CR 37 on the ground that the defense failed to disclose the existence of the surveillance video in response to Interrogatory No. 21. CP 19-21. After hearing argument from both sides, the trial court denied the motion to

exclude the video RP423 16. According to the trial court, the video was rebuttal evidence, and, therefore, the defense was not required to disclose the existence of the video in response to Mr. Strobeck's Interrogatory No. 21 requesting information about the existence of such videos. RP423 5, 15-16.

Following the trial court's ruling, defense counsel continued the cross-examination of Mr. Strobeck, which included playing the video for the jury and questioning Mr. Strobeck at length about the apparent inconsistencies between his prior testimony about the pain and disability associated with his injuries and his gait depicted on the surveillance video. RP419 55-57, 60-64.

C. SUMMARY OF ARGUMENT

The trial court's ruling on Mr. Strobeck's motion seeking to exclude the surveillance video was premised on an erroneous interpretation of the discovery rules. A party cannot fail to answer an interrogatory or fail to supplement a prior answer on the ground that the information sought is rebuttal evidence. Accordingly, the trial court's decision not to sanction Mr. Brock by excluding the video from evidence for the knowing concealment of the same was an abuse of discretion and reversible error. Mr. Strobeck respectfully requests this Court to vacate the judgment and to remand for a new trial.

D. ARGUMENT

1. Standard of Review

In general, the standard applied in reviewing trial court decisions regarding discovery sanctions is abuse of discretion. *Magana v. Hyundai Motor America*, 167 Wn.2d 570, 582, 220 P.3d 191 (2009). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). “A discretionary decision rests on untenable grounds or is based on untenable reasons if the trial court relies on unsupported facts or applies the wrong legal standard.” *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Questions of law are reviewed *de novo*. *In re Firestorm 1991*, 129 Wn.2d 130, 135, 916 P.2d 411 (1996); *Washington State Physicians Insurance Exchange & Ass’n v. Fisons*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (noting that “[a] trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law”).

In the instant case, as set forth in more detail below, the trial court erroneously determined that the defense was not required to respond to a discovery request concerning the existence of videos relating to Mr. Strobeck’s injuries because the information sought was considered “rebuttal evidence.” RP423 15-16. However, the discovery rules and case

law interpreting them do not permit a party to simply fail to respond to a discovery request on the ground that the information sought could be used as rebuttal evidence. Accordingly, the appropriate standard of review to be applied in this case is *de novo*. *Fisons*, at 339.

2. Mr. Strobeck's Objection to the Surveillance Video Was Raised in a Timely Fashion.

Mr. Brock's motion to exclude the surveillance video was filed in a timely manner. As mentioned above, Mr. Brock's counsel first disclosed the existence of surveillance video in a sidebar conference with the trial judge during Mr. Strobeck's cross-examination. During the sidebar conference, Mr. Strobeck's counsel advised the court and opposing counsel that he believed Mr. Strobeck's discovery requests included a request pertaining to the existence of any videos, but he was not certain. RP423 2. Mr. Strobeck's counsel confirmed the existence of such a discovery request upon returning to his office and reviewing the file after court was adjourned for the weekend. RP423 2-3.

Mr. Strobeck filed the motion to exclude before the trial resumed on Monday, April 23, and raised the issue with the trial court before the jury was called in after the court was in recess over the weekend. RP423 2-3. In addition, the trial court considered Mr. Strobeck's motion before the surveillance video was shown to the jury. RP419 59, 62-63.

Accordingly, Mr. Strobeck's objection to the undisclosed surveillance tape was timely raised.

3. The Broad Discovery Rules Are Intended to Promote Full Disclosure Prior to Trial.

CR 26 addresses the very broad boundaries of discovery. The rule provides in pertinent part:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

CR 26(b)(1). This general rule and the specific provisions that follow, have been described as "one of the most significant innovations of the civil rules." *Hickman v. Taylor*, 329 U.S. 495, 500, 67 S.Ct. 385, 388, 91 L.Ed. 451 (1947).

The concept that a spirit of full disclosure and forthrightness during the discovery process is necessary for the proper functioning of

modern trials is reflected in the decisions of Washington courts. For example, in *Gammon v. Clark Equip. Co.*, 38 Wn.App. 274, 686 P.2d 1102 (1984), *aff'd on other grounds*, 104 Wn.2d 613, 707 P.2d 685 (1985), this Court held defendant's improper withholding of documents requested in discovery was grounds for a new trial. *See also Taylor v. Cessna Aircraft Co., Inc.*, 39 Wn.App. 828, 836, 696 P.2d 28 (1985) (defendant's failure to produce documents requested in discovery was willful and the proper sanction was a new trial).

The United States Supreme Court has noted that the aim of the liberal discovery rules is to "make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *Gammon v. Clark Equip. Co.*, 38 Wn.App. 274, 280 (quoting *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 682, 78 S.Ct. 983, 986, 2 L.Ed.2d 1077 (1958)). The availability of liberal discovery means that civil trials "no longer need be carried on in the dark. The way is now clear . . . for the parties to obtain the fullest possible knowledge of the issues and facts before trial." *Gammon*, 38 Wn.App. at 280 (quoting *Hickman v. Taylor*, 329 U.S. at 501).

4. The Trial Court's Failure To Sanction Mr. Brock Was Premised on an Erroneous Interpretation of the Discovery Rules.

A party must answer or object to an interrogatory or a request for production. If the party does not, it must move for a protective order under CR 26(c). CR 37(d)²; *Magana v. Hyundai Motor America*, 167 Wn.2d at 584. A party cannot simply ignore or fail to provide a response. *Magana*, at 584.

There is nothing in the civil rules or case law which supports the legal premise underlying the trial court's decision denying Mr. Strobeck's motion to exclude the video, in particular, that "rebuttal evidence" is protected from discovery. In fact, the broad discovery rules permit

² CR 37(d) provides in pertinent part:

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Production or Inspection.

....

The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provide by rule 26(c).

(emphasis in original).

discovery regarding “any matter . . . whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” CR 26(b).

Even assuming Interrogatory No. 21 was objectionable because it sought to discover “rebuttal evidence,” Mr. Brock was nonetheless required to seek a protective order under CR 26(c). He did not. Simply put, the trial court’s failure to sanction Mr. Brock was based on an erroneous interpretation of the law. Accordingly, the trial court’s failure to sanction Mr. Brock for not disclosing the existence of the surveillance video prior to trial was an abuse of discretion. *Fisons*, 122 Wn.2d at 339.

5. A Party’s Failure to Amend a Prior Discovery Response Which Is No Longer True Amounts to a Knowing Concealment. CR 26(e)(2)(B).

Under CR 26(e)(2)(B), a party who obtains information that a discovery response is no longer true is required to amend the response to reflect the truth. *Thompson v. King Feed & Nutrition Service, Inc.*, 153 Wn.2d 447, 462, 105 P.3d 378 (2005); *Seals v. Seals*, 22 Wn.App. 652, 654, 590 P.2d 1301 (1979). A failure to amend a response when required is the same as “a knowing concealment.” CR 26(e)(2); *Seals*, 22 Wn.App. at 654.

Mr. Brock and his attorneys presumably did not have the surveillance video of Mr. Strobeck at the time Mr. Brock served the initial

responses to the pattern interrogatories on February 21, 2012. The video was taken thirty days later on March 22, 2012. RP419 62. While Mr. Brock's response³ to Interrogatory No. 21, which asked the defense to list, among other things, any videos relating to the injuries at issue, was true at the time the time the discovery responses were served in February, the response was no longer true thirty days later when the defense obtained the surveillance video.

Under CR 26(e)(2), Mr. Brock was clearly obligated to supplement its response to Interrogatory No. 21 by disclosing the existence of the video along with the other information sought pertaining to the video. Or, in the alternative, Mr. Brock was required to seek a protective order pursuant to CR 26(c). Under the circumstances presented here, Mr. Brock knowingly concealed the existence of the video. CR 26(e)(2); *Thompson v. King Feed & Nutrition Service, Inc.*, 153 Wn.2d at 462.

6. The Appropriate Sanction for Mr. Brock's Knowing Concealment Was Exclusion of the Video. CR 37.

CR 37 sets forth the rules regarding sanctions when a party fails to make discovery.⁴ CR 37(d)⁵ authorizes a court to impose the sanctions

³ Mr. Brock's response to Interrogatory No. 21 was: "[n]one known." CP 29.

⁴ The certification requirement contained in CR 26(g) also provides a basis for a court to impose sanctions for discovery non-compliance. However, CR 26(g) is more suited to situations where an attorney's response or

listed in CR 37(b)(2)⁶ when a party fails to respond to interrogatories or fails to supplement responses under CR 26(e), which range from exclusion of evidence (CR 37(b)(2)(B)) to granting default judgment (CR

objection to a request is (1) not consistent with the civil rules and existing law; (2) interposed for an improper purpose; and (3) unreasonable or unduly burdensome or expensive given the amount in controversy and the importance of issues at stake in the litigation. *See eg. Wash. State Physicians Insurance Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 352 (misleading responses and answers to discovery requests did not comply with either spirit or letter of the discovery rules and were signed in violation of the certificate requirement of CR 26(g)). In the instant case, Mr. Brock knowingly concealed the existence of the surveillance video. Accordingly, the sanctions provisions under Rule 37 better fit the situation presented here.

⁵ CR 37(d) provides in pertinent part:

If a party . . . fails to . . . (2) serve answers or objections to interrogatories . . . the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action under authorized under sections (A), (B), and (C) of subsection (b)(2) of this rule.

⁶ CR 37(b)(2)(B) states:

(2) Sanctions by Court in Which Action is Pending.

...

(B) An order refusing to allow the disobedient party to support or oppose the designated claims or defenses, or prohibiting him from introducing designated matters into evidence.

(italics in original).

37(b)(2)(D)). *Magana v. Hyundai Motor America*, 167 Wn.2d at 583-4; *Smith v. Behr Process Corp.*, 113 Wn.App. 306, 324, 54 P.3d 665 (2002).

In general, certain principles are to be applied when a court determines the proper sanctions to impose. For example, sanctions should, at a minimum, insure that the wrongdoer does not profit from the wrong. *Fisons*, 122 Wn.2d at 355-56; *Gammon v. Clark Equipment, Co.*, 38 Wn.App. at 280. In addition, the purpose of sanctions is “to deter, to punish, to compensate, and to educate.” *Magana*, at 584.

In Washington, exclusion of evidence under CR 37(b) is a proper remedy where (1) one party willfully or deliberately violated the discovery rules; (2) the opposing party was substantially prejudiced in its ability to prepare for trial; and (3) a lesser sanction will not suffice. *Id.* at 584.

a. Mr. Brock Willfully Concealed the Existence of the Surveillance Video In Violation of the Discovery Rules.

Mr. Brock willfully violated the discovery rules by failing to supplement its response to Interrogatory No. 21 as required by CR 26(e)(2)(B). As stated above, by failing to supplement the discovery response Mr. Brock “knowingly concealed” the existence of the surveillance video. CR 26(e)(2). The defense knew about the surveillance video on March 22, 2012, approximately one month before trial. RP419 62. Mr. Brock had ample opportunity to supplement the discovery

response between the time he acquired the video and before trial commenced. Instead, the defense made a deliberate, strategic decision to conceal the existence of the video until Mr. Strobeck had presented his case at trial.

b. Mr. Strobeck Suffered Substantial Prejudice.

Mr. Strobeck suffered substantial prejudice as a result of Mr. Brock's knowing concealment of the surveillance video. Courts have uniformly held that video surveillance must be produced in personal injury cases in discovery and prior to trial. *Papadrakis v. CSX Transp., Inc.*, 233 F.R.D. 227, 228 (D. Mass. 2006). ("As the existence and extent of injury is the very essence of Plaintiff's claims in the case at bar, the surveillance tapes need to be produced."). In *Wegner v. Viessman, Inc.*, 153 F.R.D. 154, 156 (N.D. Iowa 1994), the court required the defendant to disclose the existence of surveillance videos or be barred from showing them in trial. Without such a disclosure, the plaintiff's interests would not be sufficiently protected. *Id.*

As the extent of Mr. Strobeck's injuries goes to the very essence of his claims in this case, the existence of the surveillance video should have been produced in response to Mr. Strobeck's discovery in order for him to effectively prepare for trial and to present his case to the jury. Mr.

Strobeck was clearly substantially prejudiced by Mr. Brock's knowing concealment of the existence of the video.

In *Chiasson v. Zapata Gulf Marine Corp.*, 988 F.2d 513 (5th Cir. 1993), the Fifth Circuit Court of Appeals rejected the argument that non-disclosure of video surveillance merely serves to promote the truth. The court stated that such an argument:

flies directly in the face of the very broad purpose of discovery so that all relevant evidence is disclosed as early as possible making a trial 'less a game of blind man's bluff and a more fair contest' [citation omitted] where each party can knowledgably evaluate the strength of its evidence and chances of success.

Chiasson, at 517.

For the reasons stated above, Mr. Strobeck was substantially prejudiced in preparing and presenting his case to the jury at trial.

c. Any Lesser Sanction Than Exclusion of the Video Would Not Have Sufficed.

The appropriate sanction for the defense's knowing concealment of the surveillance video until Mr. Strobeck had nearly completed presentation of his case in chief at trial was exclusion of the video from evidence. Any lesser sanction such as the imposition of a monetary fine, a jury instruction, striking defendant's affirmative defenses, or a continuance, would not have sufficed.

Moreover, the defense should not have been allowed to benefit from the knowing concealment of the surveillance video. As stated above, a court should issue sanctions appropriate to advancing the purposes of discovery, and the sanction should insure that the wrongdoer does not profit from the wrong. *Magana v. Hyundai Motor America*, 167 Wn.2d at 590. *Washington State Physicians Ins. Exch. & Ass'n. v. Fisons Corp.* 122 Wn.2d 299, 355-56. Approval of the defense's actions plainly undermines the purpose of discovery. Far from insuring that a wrongdoer not profit from his wrong, the lack of an appropriate sanction would simply encourage litigants to embrace tactics of evasion and delay. *Gammon v. Clark Equipment, Co.*, 38 Wn.App. at 280.

7. The Trial Court's Abuse of Discretion Is Reversible Error.

For the reasons set forth above, the trial court committed reversible error by admitting the surveillance tape into evidence. *See Chiasson v. Zapata Gulf Marine Corp.*, 988 F.2d at 513 (admission of undisclosed surveillance video in personal injury case was reversible error). The only practical remedy at this stage of the case is to vacate the judgment and remand for a new trial. *Gammon*, at 282.

Mr. Strobeck anticipates that the defense will argue that the trial court's error in admitting the surveillance video was harmless. Such an argument in a similar case where the defense withheld accident reports

sought in discovery was rejected by this Court in *Gammon v. Clark Equipment, Co.*, 38 Wn.App. 274, 282. In *Gammon*, the court stated it was precisely because it could not be known what full compliance with the discovery rules would have had on the outcome the case a new trial a must be granted. *Id.* at 282.

[I]t cannot be stated with certainty that all of this would have changed the result of the case. But as said by the [United States] Supreme Court, a litigant who has engaged in the misconduct is not entitled to the “benefit of the calculation as to the extent of the wrong inflicted upon his opponent.”

Id. (quoting, *Seaboldt v. Pennsylvania R.R. Co.* v. 290 F.2d 296, 300 (3d. Cir. 1961)).

The same is true in the instant case. It cannot be known what impact the surveillance video had on the outcome of the case. However, its importance is obvious. The defense’s cross-examination of Mr. Strobeck focused on the purported inconsistencies between his direct testimony concerning the disability caused by his injuries and the surveillance video. RP419 55-57, 60-64. Moreover, a new trial is necessary in this case to discourage other litigants from employing similar tactics in failing to respond to discovery requests regarding the existence of surveillance videos.

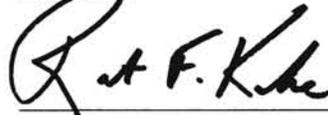
E. CONCLUSION

Mr. Brock knowingly concealed the existence of the surveillance video of Mr. Strobeck. The trial court's failure to exclude the video from evidence was an abuse of discretion because it was based on an erroneous interpretation of the law. The only appropriate remedy is to grant Mr. Strobeck a new trial. Accordingly, Mr. Strobeck respectfully requests this Court to vacate the judgment and to remand the case for a new trial.

RESPECTFULLY SUBMITTED this 26 day of November, 2012

ROBERT F. KEHOE, ATTORNEY
AT LAW

By:



Robert F. Kehoe, WSBA: #21873
Attorney for Appellant Brent
Strobeck

1900 W. Nickerson St., Suite 320
Seattle, WA 98119
(206) 283-7733
rfk@psvoa.com

NO. 69203-8

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION I**

BRENT STROBECK,

Appellant,

vs.

DAVID BROCK,

Respondent.

CERTIFICATE OF SERVICE

IT
RECORDED
INDEXED
NOV 27 2012
CLERK OF COURT

I herby certify that on November 26, 2012, I served counsel of record with a true and correct copy of the following document:

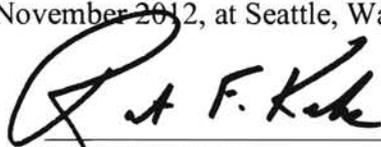
Appellant's Brief

by causing the same to be delivered via U. S. Mail as follows:

Marvin W. Lee
Hollenbeck Lancaster, et al.
15500 SE 30th Place, Suite 201
Bellevue, WA 98007

I further certify that all parties required to be served have been served. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26 day of November 2012, at Seattle, Washington.



Robert F. Kehoe